

1 BROOKS R. BROWN (SBN 250724)  
bbrown@goodwinlaw.com  
2 W. KYLE TAYMAN (pro hac vice)  
KTayman@goodwinlaw.com  
3 **GOODWIN PROCTER LLP**  
901 New York Avenue NW  
4 Washington, DC 20001  
Tel.: +1 202 346 4000  
5 Fax.: +1 202 346 4444

6 LAURA A. STOLL (SBN 255023)  
lstoll@goodwinlaw.com  
7 **GOODWIN PROCTER LLP**  
601 S. Figueroa Street, 41st Floor  
8 Los Angeles, CA 90017  
Tel.: +1 213 426 2500  
9 Fax.: +1 213 623 1673

10 Attorneys for Defendant  
QUICKEN LOANS INC.

11  
12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**  
14 **WESTERN DIVISION**

15 AMANDA HILL, individually and on  
16 behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 QUICKEN LOANS INC.,  
20 Defendant.

Case No. 5:19-cv-00163-FMO-SP

**DECLARATION OF MITCHELL  
VINER IN SUPPORT OF QUICKEN  
LOANS INC.'S MOTION TO  
COMPEL ARBITRATION**

Date: May 16, 2019  
Time: 10:00 a.m.  
Courtroom: 6D  
Judge: Hon. Fernando M. Olguin  
350 W. 1st Street, 6th Floor,  
Los Angeles, CA 90012

Filed concurrently with:

1. Notice of motion and motion;
2. Memorandum;
3. Declaration of W. Kyle Tayman;
4. Declaration of Parul Luthra; and
5. Proposed Order

**DECLARATION OF MITCHELL VINER**

I, Mitchell Viner, hereby declare and state as follows:

1. I am General Counsel of LMB OpCo, LLC, which is the parent company of LMB Mortgage Services, Inc. d/b/a LowerMyBills.com (“LMB”). I have held this position since October 22, 2012. I make this Declaration in support of Quicken Loans Inc.’s Motion to Compel Arbitration. The facts set forth in this Declaration are of my own personal knowledge, and if called as a witness, I could and would testify competently as to their truth.

2. LMB operates a free online referral service for consumers seeking home refinancing leads through its website LowerMyBills.com, as well as other third-party websites powered by LMB, such as YourVASurvey.Info. Through these websites, LMB offers consumers a free referral service to mortgage loan providers, such as Quicken Loans Inc. (“Quicken Loans”). LMB and Quicken Loans are affiliated companies, as Rock Holdings Inc. is the parent company of both.

3. When a consumer voluntarily visits LMB’s website or a website powered by LMB, the consumer enters various pieces of information about themselves, including the following: name, property address, phone number, email address, estimated home value, current interest rate, and level of debt. The consumer is then given the option to consent to LMB sharing their contact information with LMB partners and to consent to those partners, including Quicken Loans, contacting the consumer by phone or text message. If the consumer consents, LMB will provide the consumer’s information to one or more mortgage service providers that partner with LMB. The consumer is at all times made aware that LMB’s service is a third-party referral service, and that his or her data will be shared with a third party provider if they provide their consent for LMB to do so.

4. I have reviewed the First Amended Complaint in this case that Plaintiff Amanda Hill has filed against Quicken Loans. In her First Amended Complaint, Plaintiff alleges that she was contacted on her cellular telephone number ending in

1 “9785.”

2 5. I have reviewed LMB company records relating to a phone number  
3 ending in “9785.” The company records show that a consumer with the last name  
4 “Hill” with a telephone number with the same last four digits as the one identified in  
5 the First Amended Complaint (a) navigated to YourVASurvey.Info, a website  
6 powered by LMB, on October 10, 2018, and (b) subsequently navigated to  
7 LowerMyBills.com, an LMB-owned website, on November 12, 2018.

8 6. As General Counsel, I am familiar with the LowerMyBills.com and  
9 YourVASurvey.Info websites, the information entry procedures for such websites,  
10 and the LMB Terms of Use from the October and November 2018 time period. To  
11 prepare this Declaration, I reviewed LMB’s business records kept in the ordinary  
12 course of business regarding how YourVASurvey.Info and LowerMyBills.com  
13 respectively existed on October 10, 2018 and November 12, 2018, and reviewed  
14 screenshots that would have been presented to Plaintiff when she navigated to those  
15 websites, as well as the information available on the websites’ information entry  
16 process. LMB does not capture or retain in-session screenshots. Instead, LMB’s  
17 internal database maintains the data that a consumer enters during the information  
18 entry process on its websites or the websites it powers.

19 7. Consumers who visited YourVASurvey.Info in October 2018 answered  
20 a set of preliminary questions, and then if their answers met certain criteria, LMB’s  
21 matching engine was engaged, which resulted in LMB’s disclosures, privacy policy,  
22 and terms of use being presented to the consumer during the information entry  
23 process. Attached as **Exhibit 1** to this Declaration are true and correct copies of  
24 screenshots reflecting the information entry process that would have been presented  
25 to a consumer who navigated to the YourVASurvey.Info website on October 10,  
26 2018 and whose answers triggered LMB’s matching engine.

27 8. As shown in Exhibit 1 hereto and in the screenshot below, in October  
28 of 2018 users of the YourVASurvey.Info website for whom the LMB matching

1 engine was engaged provided consent to be contacted “including through automated  
2 or prerecorded means” before they received any referrals through LMB’s free  
3 service:

4 “By clicking the button above, you express your understanding and  
5 consent . . . [t]o be matched with, and contacted by, up to 5  
6 participants in the **LMB Provider Network** about mortgage and  
7 financial services products, and consent (not required as a condition to  
8 purchase a good/service) for us and them to contact you (including  
9 through automated or prerecorded means) via telephone at the phone  
10 number provided above, on mobile devices (including SMS and  
11 MMS), and email, even if you are on a corporate, state or national Do  
12 Not Call Registry.”

**YOURVASURVEY.INFO**

Great News! Your rates are ready to view.  
Enter your info so we can personalize your results.

First Name\*  
Enter First Name

Last Name\*  
Enter Last Name

Phone\*  
Enter Phone Number

Street Address\*  
Enter Street Address

[Change](#)

**See my results! ►**

By clicking the button above, you express your understanding and consent, electronically via E-sign, to the following:

1. To be matched with, and contacted by, up to 5 participants in the **LMB Provider Network** about mortgage and financial services products, and consent (not required as a condition to purchase a good/service) for us and them to contact you (including through automated or prerecorded means) via telephone at the phone number provided above, on mobile devices (including SMS and MMS), and email, even if you are on a corporate, state or national Do Not call Registry. As an alternative, you may contact us by email at [customercare@coredigital.com](mailto:customercare@coredigital.com).
2. To the LMB Lending [Terms of Use](#), [Privacy Policy](#), and Consent to Doing Business Electronically.
3. And that as a condition of such consent, you are providing express Written Instructions (as defined under applicable law(s)) to LMB to utilize your information in order to reference your consumer credit report for the purpose of validating your self-reported information. Matched Providers will contact you directly to discuss their financial services and products, and to gather additional information, in order to best service your request for information and products.
4. Additionally, if selected above, you consent to be matched to up to an additional 3 providers about solar services, home improvement services, and home insurance services, and consent (not required as a condition to purchase a good/service) for us and them to contact you (including through automated or prerecorded means) via telephone at the phone number provided above, on mobile devices (including SMS and MMS), and email, even if you are on a corporate, state or national Do Not call Registry. As an alternative, you may contact us by email at [customercare@coredigital.com](mailto:customercare@coredigital.com).

1           9. This language appeared directly below the “See my results!” button.  
2 Clicking on the words “LMB Provider Network” would take the user to a list of  
3 lenders in LMB’s network, which included Quicken Loans.

4           10. In October 2018, all YourVASurvey.Info website users who were  
5 matched with LMB also agreed, by clicking the “See my results!” button, “[t]o the  
6 LMB Lending **Terms of Use, Privacy Policy**, and Consent to Doing Business  
7 Electronically,” including the following provisions:

8  
9 By clicking the button above, you express your understanding and consent,  
electronically via E-sign, to the following:

10 1. To be matched with, and contacted by, up to 5 participants in the [LMB](#)  
11 [Provider Network](#) about mortgage and financial services products, and consent  
(not required as a condition to purchase a good/service) for us and them to  
12 contact you (including through automated or prerecorded means) via  
telephone at the phone number provided above, on mobile devices (including  
SMS and MMS), and email, even if you are on a corporate, state or national  
Do Not call Registry. As an alternative, you may contact us by email at  
[customercare@coredigital.com](mailto:customercare@coredigital.com).

13 2. To the LMB Lending [Terms of Use](#), [Privacy Policy](#), and Consent to Doing  
14 Business Electronically.

15 3. And that as a condition of such consent, you are providing express Written  
Instructions (as defined under applicable law(s)) to LMB to utilize your  
16 information in order to reference your consumer credit report for the purpose of  
validating your self-reported information. Matched Providers will contact you  
17 directly to discuss their financial services and products, and to gather  
additional information, in order to best service your request for information and  
products.

18 4. Additionally, if selected above, you consent to be matched to up to an  
19 additional 3 providers about solar services, home improvement services, and  
home insurance services, and consent (not required as a condition to purchase  
a good/service) for us and them to contact you (including through automated or  
20 prerecorded means) via telephone at the phone number provided above, on  
mobile devices (including SMS and MMS), and email, even if you are on a  
corporate, state or national Do Not call Registry. As an alternative, you may  
21 contact us by email at [customercare@coredigital.com](mailto:customercare@coredigital.com).

22           11. This language also appeared directly below the “See my results!”  
23 button. The words “Terms of Use” and “Privacy Policy” were underlined and  
24 appeared in blue text, as compared to the surrounding language that appeared in  
25 grey text without underlining. “Terms of Use” and “Privacy Policy” appeared as  
26 hyperlinks on that page. Clicking on the words “Terms of Use” or “Privacy Policy”  
27 would take the user to LMB’s full-text Terms of Use or Privacy Policy.

28           12. Attached as **Exhibit 2** to this Declaration are true and correct copies of

1 screenshots reflecting the information entry process that would have been presented  
2 to a consumer who navigated to the LowerMyBills.com website on November 12,  
3 2018, and whose information was already in LMB's possession because the  
4 consumer had visited an LMB or LMB-powered website in the preceding 60 days.

5 13. In November of 2018, if a consumer had visited a website owned or  
6 powered by LMB in the preceding 60 days, the consumer would not have to re-enter  
7 all of his or her information. Instead, a consumer would be greeted with a Welcome  
8 Back screen. Before receiving any referrals, and as reflected in the screenshot  
9 below, a consumer would have to answer any additional question(s) (e.g., purpose of  
10 refinance) and click a button, on the Welcome Back screen, consenting to be  
11 contacted "including through automated or prerecorded means":

12 "By clicking the button above, you express your understanding and  
13 consent ... [t]o be matched with, and contacted by, up to 5  
14 participants in the **LMB Provider Network** about mortgage and  
15 financial services products, and consent (not required as a condition to  
16 purchase a good/service) for us and them to contact you (including  
17 through automated or prerecorded means) via telephone at the phone  
18 number provided above, on mobile devices (including SMS and  
19 MMS), and email, even if you are on a corporate, state or national Do  
20 Not Call Registry."



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Welcome Back,

Still interested in refinancing?

If you or your family has served our country, veteran benefit programs may be available for you!

Purpose of Refinance:

Select One

By selecting your refinance purpose, you consent to be contacted, including through automated or prerecorded means, by our providers.

Calculate Your FREE Results »

By clicking the button above, you express your understanding and consent, electronically via E-sign, to the following:

1. To be matched with, and contacted by, up to 5 participants in the LMB Provider Network about mortgage and financial services products, and consent (not required as a condition to purchase a good/service) for us and them to contact you (including through automated or prerecorded means) via telephone at the phone number provided above, on mobile devices (including SMS and MMS), and email, even if you are on a corporate, state or national Do Not call Registry. As an alternative, you may contact us by email at [customerscare@conedigital.com](mailto:customerscare@conedigital.com).

2. To the LMB Lending [Terms of Use](#), [Privacy Policy](#), and Consent to Doing Business Electronically.

3. And that as a condition of such consent, you are providing express Written Instructions (as defined under applicable law(s)) to LMB to utilize your information in order to reference your consumer credit report for the purpose of validating your self-reported information. Matched Providers will contact you directly to discuss their financial services and products, and to gather additional information, in order to best service your request for information and products.

4. Additionally, if selected above, you consent to be matched to up to an additional 3 providers about solar services, home improvement services, and home insurance services, and consent (not required as a condition to purchase a good/service) for us and them to contact you (including through automated or prerecorded means) via telephone at the phone number provided above, on mobile devices (including SMS and MMS), and email, even if you are on a corporate, state or national Do Not call Registry. As an alternative, you may contact us by email at [customerscare@conedigital.com](mailto:customerscare@conedigital.com).



[Terms of Use](#) | [Privacy](#) | [Licenses & Disclosures](#)

(LMB0000-WPFP-402-02-2018.04.03.1-205.war) (C-1) (T-1939786) (P-2685774) (PG-4548516) (S-1) (SID-)

14. This language appeared directly below the “Calculate Your FREE Results” button. Clicking on the words “LMB Provider Network” would take the user to a list of lenders in LMB’s network, which included Quicken Loans.

15. In November 2018, all LowerMyBills.com website users, by clicking the “Calculate Your FREE Results” button, also agreed “[t]o the LMB Lending **Terms of Use, Privacy Policy**, and Consent to Doing Business Electronically,” including the following provisions:

By clicking the button above, you express your understanding and consent, electronically via E-sign, to the following:

1. To be matched with, and contacted by, up to 5 participants in the LMB Provider Network about mortgage and financial services products, and consent (not required as a condition to purchase a good/service) for us and them to contact you (including through automated or prerecorded means) via telephone at the phone number provided above, on mobile devices (including SMS and MMS), and email, even if you are on a corporate, state or national Do Not call Registry. As an alternative, you may contact us by email at [customercare@conedigital.com](mailto:customercare@conedigital.com).

2. To the LMB Lending Terms of Use, Privacy Policy, and Consent to Doing Business Electronically.

3. And that as a condition of such consent, you are providing express Written Instructions (as defined under applicable law(s)) to LMB to utilize your information in order to reference your consumer credit report for the purpose of validating your self-reported information. Matched Providers will contact you directly to discuss their financial services and products, and to gather additional information, in order to best service your request for information and products.

4. Additionally, if selected above, you consent to be matched to up to an additional 3 providers about solar services, home improvement services, and home insurance services, and consent (not required as a condition to purchase a good/service) for us and them to contact you (including through automated or prerecorded means) via telephone at the phone number provided above, on mobile devices (including SMS and MMS), and email, even if you are on a corporate, state or national Do Not call Registry. As an alternative, you may contact us by email at [customercare@conedigital.com](mailto:customercare@conedigital.com).

16. This language appeared directly below the “Calculate Your FREE Results” button. The words “Terms of Use” and “Privacy Policy” were underlined, as compared to the surrounding language that appeared without underlining. “Terms of Use” and “Privacy Policy” appeared as hyperlinks on that page. Clicking on the words “Terms of Use” or “Privacy Policy” would take the user to LMB’s full-text Terms of Use or Privacy Policy.

17. I have reviewed LMB company records relating to a phone number ending in “9785.” The company records show that a consumer with the last name “Hill,” with a telephone number with the same last four digits as the one identified in the First Amended Complaint, navigated to YourVASurvey.Info on October 10, 2018, at 10:21:49 PM PST. The consumer named Hill entered the following information on the YourVASurvey.Info website during the information entry process described above:

a. Name: Amanda Hill

b. Telephone Number: 951-813-9785

c. Email Address: pandahill51@gmail.com

d. Property Address: 35312 Frederick St., Wildomar, CA 92595

The consumer named Hill also indicated that she or her spouse had served in the



1 military. After “Hill” with phone number “951-813-9785” was matched with LMB  
2 and entered the foregoing information, Hill was presented with a page containing  
3 links to LMB’s Terms of Use and Privacy Policy. She then clicked the button  
4 indicating agreement to LMB’s Terms of Use and Privacy Policy, as well as  
5 providing written consent to be contacted by LMB or a member of its Provider  
6 Network “including through automated or prerecorded means[] via telephone . . . on  
7 mobile devices (including SMS and MMS).”

8 18. After Hill provided the consents described above, the website generated  
9 the following Lead ID: F3FF3E56-DECF-B906-0587-19AB7E187891. On behalf  
10 of Hill, LMB, in turn, sent that Lead ID and the information that Hill entered to  
11 potential refinance lenders, including Quicken Loans.

12 19. On November 12, 2018 at 12:12:11 PM PST Hill visited  
13 LowerMyBills.com.

14 20. Because Hill had visited YourVASurvey.Info less than 60 days earlier,  
15 she was not required to re-enter all of her information. Instead, she was greeted  
16 with a Welcome Back screen, where she was presented with a drop-down menu  
17 asking her to select the “Purpose of Refinance.” After making her selection from  
18 the drop-down menu, Hill, again, clicked the button indicating agreement to LMB’s  
19 Terms of Use and Privacy Policy, as well as providing written consent to be  
20 contacted by LMB or a member of its Provider Network “including through  
21 automated or prerecorded means[] via telephone . . . on mobile devices (including  
22 SMS and MMS).”

23 21. After Hill provided the consent described above, the website generated  
24 the following Lead ID: 6F7A9886-252B-6196-E09E-04844567D7BB. On behalf of  
25 Hill, LMB, in turn, sent that Lead ID and the information that Hill entered to  
26 potential refinance lenders, including Quicken Loans.

27 22. In October and November of 2018, LMB’s Terms of Use stated that by  
28 submitting a contact request, the users of LMB’s services were consenting to “be

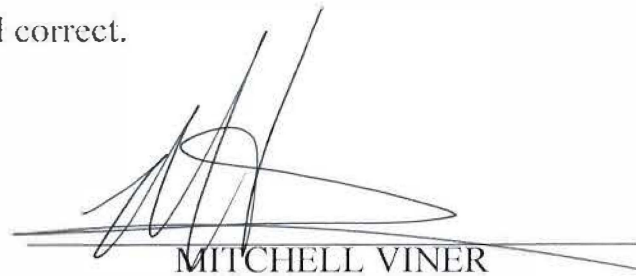
1 contacted by one or more Clients, which may include Quicken Loans.”

2 23. In October and November of 2018, LMB’s Terms of Use had a  
3 mandatory arbitration clause, which required that all disputes with LMB or its  
4 parents, affiliates, subsidiaries or related companies shall be resolved through  
5 binding arbitration.

6 24. Attached as **Exhibit 3** to this Declaration is a true and correct copy of  
7 LMB’s Terms of Use that were in effect during October and November 2018. A  
8 user who clicked on a “Terms of Use” hyperlink during October and November  
9 2018 would have been directed to a webpage containing these Terms of Use.

10  
11 I declare under penalty of perjury under the laws of the United States of  
12 America that the foregoing is true and correct.

13  
14 Executed on April 15, 2019.

15  
16   
MITCHELL VINER